IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6927 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIBHAGIYA YUVAK MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RR VAKIL for Petitioner(s) : 1,
Ms. Phalguni Patel, AGP for Respondent(s) : 1, 3,
MR. AD Oza with Mr. Hemang Raval for respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 11/12/2007
ORAL JUDGMENT

The petitioner is a Trust registered under the provisions of Bombay Public Trusts Act, 1950 under Registration No. 598/Panchmahal on 19.3.1990. In present petition the petitioner Trust challenges

the order dated 31.7.1996 passed by respondent No.1 Deputy Secretary whereby the respondent No.1 rejected for the reasons mentioned in the order, present petitioner's application dated 4.1.1994 seeking permission to restart the school. Against the said order the petitioner has preferred the present petition praying inter alia that the order dated 31st July, 1996 at Annexure 'N' to the petition may be quashed and set aside.

2. In support of the relief prayed for in the petition, following facts have been mentioned;

2.1. In September 1981, the petitioner Trust had applied for starting a secondary school at Village Dudhmali. The said application was addressed to respondent No.2, who by his communication dated 3.3.1982 asked for certain other details and information from the petitioner Trust. It is the case of the petitioner Trust that vide communication dated 10.3.1982 it had replied the communication dated 3.3.1982 and the details called for by respondent No.2 were supplied.

2.2. After considering the application and the details supplied by the petitioner Trust, the respondent No.2 by his order dated 15.4.1982 rejected the petitioner Trust's request for starting Secondary School in Village Dudhmali.

2.3. The said order dated 15.4.1982 was taken in appeal by the petitioner Trust. The petitioner Trust claims that by order dated 6.10.1982 the appeal was allowed and permission to the petitioner's school to start secondary school from June 1982, was granted.

2.4. In pursuance of the said order, the respondent No.3 issued registration in favour of the petitioner's school by communication dated 29.11.1982. Thereafter, respondent No.2 also issued registration in favour of petitioner's school by communication/order dated 28.12.1982.

2.5. The petitioner has also stated that in January 1983 it had applied for starting Standard-IX and by communication/order dated 28.6.1983 the

respondent No.3 had granted permission to start Std.IX.

2.6. The petitioner Trust continued the educational activity until June 1986 and thereafter for want of sufficient number of students it had to discontinue the educational activities. It is pertinent to note that the petitioner Trust was receiving Grant until June 1986.

2.7. After having discontinued the education activities from June 1986 the petitioner Trust restarted the school in the academic year 1992-1993.

2.8. After having restarted the school in the year 1992-1993 the petitioner made an application seeking permission to restart the school. The application (seeking permission to restart the school) was made subsequently after the school was already restarted without following procedure. The said request was rejected by the competent authority by an order dated 29.6.1994 [Annexure G].

2.9. The said decision dated 29.6.1994 was

challenged by the petitioner by way of writ petition, being Special Civil Application No. 12633 of 1994. The said petition was filed by the petitioner Trust on or around 15.11.1994, however in the meantime an order dated 9.11.1994 was passed by the respondent No.2 Board whereby the registration of the school was cancelled. The said communication/order dated 9.11.1994 was, as per petitioner's claim, received by it on 18.11.1994. Thus, the petitioner made request for permission to amend the aforesaid petition being SCA No. 12633/1994, however the Court rejected the prayer for amendment on the ground that it constituted a fresh cause of action. What is relevant, however, is the fact that in the said petition, SCA No. 12633/1994 the Court passed an order dated 29.9.1995 whereby the Court [Coram: Mr.N.N. Mathur, J. as His Lordships then was] directed the respondents to decide the petitioner's application afresh.

2.10. After the said direction by the Court, an order dated 31.7.1996 came to be passed by Deputy Secretary, whereby the petitioner's

request/application seeking permission to restart the school was again rejected. It is against the said order dated 31.7.1996 that the petitioner has preferred present petition.

3. Heard Mr. RR Vakil, Advocate for petitioner Trust,Mr. Oza, Advocate for respondent No.2 Board, and Ms.Phalguni Patel,AGP for respondents No.1 and 3.

4. Before proceeding further, it is required to be noted that subsequent to the abovereferred order dated 29.9.95 passed by the Court in SCA No. 12633/1994, the petitioner Trust had preferred writ petition being Special Civil Application No. 8887 of 1995 wherein the petitioner Trust challenged the decision dated 9.11.1994 of respondent No.2 Board cancelling its registration. It is submitted on behalf of the respondent No.1 today during hearing that in the said writ petition, viz., SCA No. 8887/1995 this Court [Coram: Mr. M.C. Patel, J., as His Lordships then was] has passed the order dated 26.6.2006 whereby the said petition has been disposed of in view of the fact that the petitioner Trust had again closed the school with effect from May 2000.

It is not in dispute that as of now also the petitioner Trust is not running the School.

5. Mr. Vakil, Advocate for petitioner submitted, in light of the subsequent development, i.e., closure of the school since May 2000, that due to insufficient strength and shortage of funds the petitioner Trust was constrained to discontinue the educational activities and close down the school, however, as the petitioner Trust intends to run the school if the permission to restart the school is granted. He also submitted that for the said purpose, however, the petitioner Trust would require the Grant.

6. Mr. Oza, Advocate and Ms. Patel, AGP appearing for respondents have supported and justified the order dated 31.7.1996 and opposed the request and submission made by Mr. Vakil, Advocate.

7. It is pertinent to note that for one reason or another the petitioner's school has, from the time it started its activity of running and administering

High School in 1982, twice closed down the school, i.e., discontinued the education activities on two occasions, in 1986-1987 and then in 2000. On both the occasions, the petitioner Trust had discontinued its activities without following the procedure and without informing the concerned authorities. At one stage, i.e., in 1992 the petitioner Trust did attempt to restart the school but that was also done without following procedure.

8. The petitioner Trust has acted irresponsibly and with disregard towards procedure while discontinuing the education activities without permission or without following the procedure and then in restarting the school without permission when the petitioner trust made the request application dated 4.1.1994 and it was *post facto* request which was made to the authority for permission to restart the school. Neither at the time when it discontinued the education activities in the year 1986 nor at the time when it restarted the school in the year 1982 the petitioner Trust had followed the requisite procedure including informing the respondent about

the discontinuation of the educational activities and/or restarting the same. It is pertinent to note that when management of a school acts in such irresponsible manner, then it tinkers with the fate and future of the students.

9. In the facts and circumstances which flow from the record of the present petition, it is not possible to hold that the order dated 31.7.1996 is unjustified or arbitrary or without due application of mind or suffers from any manifest or apparent error which may warrant interference in exercise of jurisdiction under Article 227 of the Constitution of India, more so because of the fact that even subsequently, i.e., in 2000 the petitioner Trust has again discontinued the educational activity. The authority has also recorded reasons in support of its decision.

10. Almost 7 years have passed since the said second closure. In that view of the matter also, the relief prayed for by the petitioner Trust against the order dated 31.7.1996 does not deserve to be granted. Actually, in view of and after the second closure of

the school w.e.f. May 2000, even otherwise the earlier application dated 4.1.1994 has lost its relevance, significance and object and consequently the order dated 31.7.1996 and the challenge against the said order have become infructuous inasmuch as the petitioner Trust had, without waiting for permission, started and run the school and then discontinued it w.e.f. May 2000. Hence, in view of the said closure in 2000, the application dated 4.1.1994 and the order dated 31st July 1996 have no relevance or life and they are infructuous. In fact, the submission made on behalf of the respondents, that in view of the order passed by this Court in SCA No. 8887/1995 and in view of the fact that the school of the petitioner Trust has remained closed since 2000 even the present petition ought to be disposed of as infructuous, on the same lines as this Court passed the order in SCA No. 8887/1995, appears justified.

11. In view of the aforesaid discussion, it becomes clear that no case for setting aside the order dated 31.7.1996 is made out, and in view of the

subsequent event, viz., the second closure of the school since 2000, there does not appear to be any justifiable reason to set aside the order dated 31.7.1996 and/or to direct the respondents to consider the application dated 4.1.1994 of the petitioner Trust seeking permission to restart the school. In view of the aforesaid facts, the order dated 31.7.1996, which is impugned in the present petition, does not continue to bear any significance and has become irrelevant and infructuous. Therefore also the petition does not deserve to be entertained and the reliefs do not deserve to be granted. Accordingly the petition is rejected. Rule is discharged. Interim relief, if any, stands vacated.

[K.M. Thaker, J.]

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